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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Gibraltar

Working paper prepared by the Secretariat

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I. General[1]

1. Gibraltar is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the United Kingdom of Great Britain and Northern Ireland, the area of Gibraltar is 5.86 square kilometres, and according to Spain it is 4.8 square kilometres.

2. The latest census of Gibraltar, taken on 14 October 1991, assessed the Territory's civilian population at 26,703. This was made up of 20,022 Gibraltarians, 3,811 other British subjects, including families of British servicemen stationed in Gibraltar, but excluding servicemen, and 2,870 aliens. In 1998, the population was estimated at 29,045.

II. Political developments

A. General

3. The 1969 Constitution guarantees basic civil and political rights and attributes. It assigns responsibility for local matters to a local Government. The United Kingdom, however, retains power over matters of defence, external affairs and internal security. The Governor, appointed by the sovereign of the United Kingdom, retains the power to rescind laws passed by the legislature. Furthermore, the Constitution reserves for the sovereign full power to make laws from time to time for the peace, order and good government of Gibraltar (including, without prejudice to the generality of the foregoing, laws amending or revoking that Constitution). The current Governor, Sir Richard Luce, was appointed in February 1997. A detailed discussion about the 1969 Constitution, including the positions of Spain and the United Kingdom is contained in the report of the Special Committee to the General Assembly at its twenty-fourth session.[2]

4. Legislative authority is vested in a single House of Assembly consisting of 15 elected members. Executive authority is vested in a Council, which is composed of the Governor, four ex officio members, the Chief Minister and four elected members, and which acts in an advisory capacity to the Governor. The Council of Ministers is made up of the Chief Minister, members of the House of Assembly designated by the Chief Minister and some elected members. The Council of Ministers, which acts as a cabinet, holds responsibility for specific domestic matters, with the Governor retaining the prerogative to intervene in support of his responsibilities for defence and external affairs.

5. The legal system of Gibraltar is based on the common law and statute law of England. Gibraltar retains its own court system, which includes lower courts (Court of First Instance, Coroner's Court, Magistrate's Court), a court of appeals, and a supreme court. The supreme court has unlimited jurisdiction to hear and determine any civil or criminal proceedings. At present, it consists of the Chief Justice and an additional judge appointed by the Governor.

6. In January 1999, the Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, reaffirmed that the relationship between the United Kingdom and Gibraltar continues to be governed by the 1969 Constitution.

B. General elections

7. The last general elections in Gibraltar were held on 16 May 1996 and, according to the administering Power, 88 per cent of the registered voters participated. The results were as follows: the Gibraltar Social Democratic Party, 52.2 per cent; the Gibraltar Socialist Labour Party, 43 per cent; and the Gibraltar National Party, 4.7 per cent. Consequently, the Gibraltar Social Democratic Party won eight seats in the Territorial Legislative Assembly and the Gibraltar Socialist Labour Party obtained seven seats. Mr. Peter Caruana, leader of the Gibraltar Social Democratic Party, obtained 8,561 votes and was appointed Chief Minister of Gibraltar.

8. On 4 February 1999, a by-election was held to fill a vacated seat in the House of Assembly. The winner was Dr. Joseph Garcia, who represented a Gibraltar Socialist Labour Party/Gibraltar Liberal Party alliance and who gained 52 per cent of the votes cast. According to press reports, nearly 9,000 votes were cast, representing 48 per cent of the electorate.[3]

C. Recent developments

9. In March 1999, the United Kingdom Secretary of State for Foreign and Commonwealth Affairs issued a White Paper entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories" (see A/AC.109/1999/1, annex) that proposed changes in the relationship between the United Kingdom and its overseas Territories. According to the document, the relationship between the metropolitan government and its territories must be seen "within the

overall framework of modernization and reform, and within Britain's new international role".

10. One of the Government's recommendations concerned the creation of an Overseas Territories Department within the Foreign and Commonwealth Office to ensure better links between the United Kingdom and its Territories. However, the paper indicated that because Gibraltar was within the European Union as part of the United Kingdom membership under the Treaty of Rome — the only Overseas Territory with that status — it would continue to be handled principally by the Foreign and Commonwealth Office's European Departments, reporting to the Minister responsible for Europe.

11. The Government of the United Kingdom launched a Strategic Defence Review in May 1997 to examine most areas of the United Kingdom's defence. The resultant White Paper placed renewed emphasis on the rapid deployment of British forces in response to crisis. According to the administering Power, Gibraltar and its facilities provide an independent forward operating base for British forces in the Mediterranean and serve as a transit base for vessels en route to the Middle East and elsewhere. Service manpower at Gibraltar has been reduced to the minimum necessary (440 service personnel) to manage the remaining defence facilities in the Territory. As a consequence of British defence cuts in Gibraltar, the defence input into the local economy has fallen to about 10 per cent of gross domestic product, or around £60 million. This is scheduled to fall to £40 million by the year 2000.

III. Economic conditions

A. General

12. Gibraltar has no known natural resources and lacks agricultural land. The industries, trades, and services in the Territory mainly supply the needs of its population and the large number of visitors to the Territory. The economy of Gibraltar is largely dependent on tourism and the provision of financial services such as banking, insurance, shipping, and portfolio management.

13. Per capita income was estimated as US$ 17,500 in 1997. Inflation in 1998 was estimated at 2 per cent.

B. Public finance

14. The report of the administering Power indicates that departmental revenue credited to the Consolidated Fund for the year ending on 31 March 1997 totalled £76.4 million, whereas departmental expenditure amounted to £60.1 million, compared with £71.9 million and £53.1 million, respectively, in 1994/95. The main sources of Consolidated Fund revenues were income tax, which totalled £45.3 million, and general rates, which totalled £9.2 million.

15. On 31 March 1997, the public debt of Gibraltar stood at £61.4 million, compared with £64.9 million on 31 March 1996. Expenditures are broken down as follows: education and sport, £12,300,000; electricity, £4,900,000; police, £6,900,000; port services, £4,300,000; environment and housing, £8,500,000; fire service, £2,100,000; customs, £2,200,000; Consolidated Fund charges, £18,100,000.

16. Income tax is charged on income arising in, derived from, or received in Gibraltar. Dividends, interest, pension and emoluments of office accruing in, derived from, or received in any place outside Gibraltar by an individual ordinarily resident in Gibraltar are also taxable. The rates applicable to individual residents in Gibraltar range from 20 per cent on the first £1,500 of taxable income to 50 per cent after the first £19,500.

C. Trade

17. In 1997, total imports were £300,210,000, including £26,397,000 in foodstuffs and £22,825,000 in manufactured goods. Total re-exports were £49,528,000, including £30,330,000 in machinery and transport equipment. Principal re-exports include petroleum products, manufactured goods, wines, spirits, malt whisky, and tobacco. Nearly two thirds of Gibraltar's non-fuel imports (£190,507,000) originate from the United Kingdom. Other sources of imports include Japan, the Netherlands and Spain. Exports of goods of local origin are negligible. Exports consist mainly of re-exports of petroleum and petroleum products supplied to ships.

18. Imports control did not change during the period under review. Other than a few items of essential foodstuffs, gold, jewellery, petrol, caravans, and endangered species, all goods can be imported under the Open General Licence.

D. Banking and finance

19. There were 26 banks operating in Gibraltar in 1998. The banking sector serves offshore and local customers and has balance sheet footings of over £6 billion. The Government of Gibraltar is in the process of transposing into domestic law the 4th and 7th European Union directives, which require offshore companies to publish their accounts.[4] According to the administering Power, Gibraltar is required to implement all European Community directives related to financial regulation. Gibraltar has made a commitment not only to implement the necessary measures to the minimum standard required within the European Union, but also to match United Kingdom standards of financial regulation. Gibraltar's standards of financial regulation are assessed formally and rigorously by the United Kingdom Government on a regular basis.[5] In that regard, during the period under review, the Government of Spain on several occasions expressed concern that European Union directives had not been fully implemented in Gibraltar and disputed information by the administering Power to the contrary. In February 1999, the United Kingdom submitted information to the European Union regarding the number of measures that had been implemented in Gibraltar (39), those that were inapplicable (31) and those that were in the "final stages of transposition" (8).

20. According to press reports, there has been a steady increase in the number of new companies formed in Gibraltar: 3,187 new companies were formed in 1996, 3,470 in 1997, and 3,878 in 1998.[6] There are now approximately 23,000 active companies registered under the Companies (Taxation and Concession) Ordinance. Under the Ordinance companies are exempted from the payment of income tax upon payment of a fixed annual fee, irrespective of profits made and whether these profits are received in the Territory. The exemption covers dividends, interest, directors' fees, and annual payments made to non-residents. Unless otherwise authorized, the company must not carry on trade or business in Gibraltar or in the United Kingdom and no Gibraltarian or resident of Gibraltar may have any beneficial interest in the company's shares.

E. Transportation, communications and utilities

21. Road transportation in and out of Gibraltar along the isthmus linking the Territory to Spain was disrupted in early 1999. In February 1999, Spain increased controls at its border post with Gibraltar. According to press reports, the Foreign Ministry of Spain announced that it would maintain the border controls until Gibraltar applied European Union directives to impede tax evasion, drug trafficking and money-laundering (see para. 47 below). The controls caused up to six-hour delays for vehicle traffic at the border. According to press reports, the United Kingdom submitted a complaint on the matter to the European Commission. A spokesman for the European Commission stated that there were no limits in the European Union's legislation regarding external border controls.

22. The total length of roads in the Territory is 26.75 miles (about 43.04 km). The roads are reported to be in good condition and suitable for vehicular traffic. Five bus routes serviced by 17 buses maintain communication in the Territory. The total number of registered vehicles on 30 December 1996 was 27,722.

23. Air mail is dispatched to London, and via London, to all destinations worldwide, six times a week by direct flights. Surface mail to and from the United Kingdom is received and dispatched five times a week. In 1997 eight commemorative sets of stamps were issued in the Territory.

24. As the Strait of Gibraltar is a principal water route between the Mediterranean Sea and the rest of the world, Gibraltar is used as a port by many long-distance liners and cargo ships. It has dry-dock facilities and a commercial ship repair yard. Tax concessions are available to shipowners who register their ships at Gibraltar. At the end of 1996, there were 23 vessels with a combined weight of 305,593 gross register tonnage registered in Gibraltar, of which 21 were merchant vessels. In 1997, 4,445 vessels entered the port of Gibraltar, representing a combined gross register tonnage of 84,000,000.

25. A study on the major upgrading of the Port of Gibraltar was released by the Ministry of Tourism in April 1998. A major recommendation is the creation of a self-financing Gibraltar Port Authority, which would act independently of the Government. A private sector plan for developing a container trans-shipment facility, and to expand and modernize existing facilities, is also under consideration.[7]

26. The telephone system is operated by Gibraltar NYNEX Communication, Ltd., a joint United States/Gibraltar company. NYNEX merged with Bell Atlantic on 15 August 1997. In 1997, the total number of telephones was 23,832, compared with 21,466 in 1996.

27. The Electricity Department is responsible for the supply of electricity for civilian use in the Territory. The Ministry of Defence operates a separate undertaking to meet defence requirements. During 1997, the maximum electricity

demand was 24,100 kilowatts and a total of 111.2 million kilowatt-hours were generated. Gibraltar is dependent on imported petroleum for its energy supplies.

F. Tourism

28. In 1996, tourist arrivals totalled 6 million, compared to 5.5 million in 1995. Hotel arrivals in 1996 were 46,000, generating a revenue of about £140 million. The Ministry of Tourism and Transport has introduced a policy to increase the amount of cruise ships that visit the Territory. It has set a target of 300 cruise ship arrivals for 1999, which is double the 1996 figure. There are an estimated 2,000 hotel beds in Gibraltar.

IV. Social and educational conditions

A. Labour

29. According to the administering Power, unemployment on the island is 3.8 per cent. The average number of unemployed in the first quarter of 1999 was 383, down from 580 in the same period in 1998.

30. In 1996, average weekly earnings in the Territory were £231.88, compared with £233.32 in 1995. According to press reports, 14.4 per cent of the workforce is employed in administration and national defence, and 12.4 per cent in the financial services sector. In 1998, employment in the financial services sector grew by 9.5 per cent.

31. Legislation regulating labour and employment conditions in the Territory is reported to be in line with European Union directives. The Trade Unions and Trade Disputes Ordinance of Gibraltar contains provisions similar to those in the United Kingdom for the registration and organization of trade unions. As of December 1995, there were 20 trade unions registered in the Territory.

B. Human rights and the status of women

32. The Gibraltar (Constitution) Order of 1969 guarantees the protection of the fundamental rights and freedoms of the individual and the maintenance of a Supreme Court with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with such jurisdiction and powers as are conferred upon it by the Constitution of Gibraltar or any other law.

33. The Territory has had several major international human rights instruments extended to it by the administering Power. They include the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

34. The status of women in Gibraltar, whether married or single, with or without family responsibilities, is similar to that enjoyed by women in the United Kingdom. The Social Security (Insurance Ordinance) of Gibraltar provides for the payment of a variety of benefits and allowances to expectant mothers and widows.

35. In a judgement delivered on 18 February 1999, the European Court of Human Rights determined by a vote of 17 to 2 that, with regard to Gibraltar, the United Kingdom had violated article 3 of Protocol 1 of the European Convention on Human Rights, concerning the right to participate in European parliamentary elections. The proceedings were initiated by a citizen of Gibraltar who, upon applying to register as a voter in the European parliamentary elections in 1994, was told that, under the terms of the European Community Act on Direct Elections of 1976, Gibraltar was not included in the franchise. The Court ruled that article 3 of Protocol 1 applied to Gibraltar and that the United Kingdom was responsible for securing the rights guaranteed by it.[8] The next elections for the European Parliament are in June 1999.

36. In response to a question posed in the House of Lords on 25 February 1999 about the ruling, the Parliamentary Under-Secretary of State, Foreign and Commonwealth Office, Baroness Symons, said:

> "We will be taking all available steps to secure extension of the European Parliament franchise to Gibraltar, in the light of the decision of the European Court of Human Rights. However we can only do so by amending the 1976 European Community Act on Direct Elections. This will require the agreement of all member States. [The Government] will seek such an amendment in the current negotiations in Brussels on establishing Common Principles for European parliamentary elections. We will not be introducing emergency legislation because the United Kingdom does not have the power unilaterally to extend the European Parliament franchise to Gibraltar through its domestic legislation."

C. Environment

37. In 1996, the Environmental Health Department, which was a territorial Government Department, ceased to exist. The functions formerly carried out by the Department have been transferred to a fully privatized Environmental Agency. The chief Environmental Health Officer is responsible for the overall running of the Environmental Agency and is answerable to the Minister for the Environment and Health.

38. The aforementioned White Paper on British Overseas Territories (see para. 9 above) specifically referred to Gibraltar as a key migration route for birds of prey and as one of the Territories which had ratified the Convention on Biological Diversity. The report also indicated that the common objective of the United Kingdom Government, the territorial Governments, and other groups was to use the environment of the Overseas Territories to provide benefits to the people in them, and to conserve their global heritage by managing sustainably their natural resources.[9]

D. Housing

39. According to reports of the administering Power, the Government of Gibraltar has pursued a policy of increased home ownership both to alleviate the housing shortage and to reduce the burden of increasing repair and maintenance costs for its rented accommodations. Since 1985, the level of home ownership in Gibraltar increased from 6 to 25 per cent by 1994 and to 30 per cent in 1997. At the end of 1997, the government housing waiting list contained 500 applicants, compared with 568 at the end of 1994.

E. Social welfare and assistance

40. The Social Security (Non-Contributory Benefits and Unemployment Insurance) Ordinance covers entitlement and payment of unemployment benefits to unemployed persons previously in employment. Payment of such benefits is financed from the weekly contributions by employers and employees to the Social Insurance (short-term benefit) Fund. The standard weekly rate of unemployment benefits is £37.20, with an increase of £18.20 per week for any additional dependent adult. During 1995, 609 claims for unemployment benefits were processed and 609 requests were granted.

F. Public health

41. The Gibraltar Health Authority is responsible for providing health care in the Territory. The Authority operates a group practice medical contributory scheme and gives registered persons access to free medical treatment.

42. St. Bernard's Hospital, with a total of 103 beds, provides comprehensive out-patient services and in-patient treatment for acute medical and surgical cases. It also has a maternity section and two wards for elderly patients. The King George V Psychiatric Unit has 60 beds and provides diverse types of psychiatric treatment, including in-patient and out-patient services. The territorial Health Centre provides general practice medical services, including house visits.

43. According to press reports, Gibraltar has 90 registered medical practitioners in the Territory. These include 56 doctors, 14 dental practitioners and 20 pharmacists. A Medical Registration Board was established as a result of the Medical and Health Ordinance of 1997. The Board monitors the annual registration of medical specialists that desire to practice in Gibraltar. A programme of visits by consultants from the United Kingdom covers specialties such as paediatric neurology, cardio-thoracic surgery, and plastic surgery.

44. During 1995/96, total public health expenditures amounted to £20.67 million, compared to £19.9 million in 1994/95.

G. Public education

45. The Education Department continues to be in charge of public education in Gibraltar. In 1995/96, a total of £11 million was spent on education, compared with £10.9 million in 1994/95.

46. In 1997 there were 13 primary schools (of which one was private) enrolling 3,192 students, and two secondary schools enrolling 1,826 students. The total teaching staff at both of these schools was 309. There is also a technical and vocational college with 226 full-time students. In addition, 628 university students receive State scholarships to attend universities outside the Territory.

H. Crime and crime prevention

47. The White Paper (see paras. 9 and 38 above), under the heading "Encouraging good government — combating

drug trafficking and drugs-related trade", noted legislation enacted by the local Government in Gibraltar in 1995 and 1996 that banned Gibraltar-based fast boats. According to information supplied by the administering Power, the activities of Gibraltar-based fast boats and rigid inflatables had been effectively eliminated and illicit trafficking involving Gibraltar had ceased to be a problem. During the period under review, the Government of Spain continued to express concern at what it considers to be the use of Gibraltar for laundering proceeds from drug trafficking or other illicit activities. The administering Power has pointed out that Gibraltar has introduced money-laundering legislation to United Kingdom and European Commission standards.

48. The administering Power reported 1,002 minor offences (such as those related to liquor, disorderly conduct, and firearms violations) and 858 arrests for minor offences in 1996, down from 1,659 offences and 1,555 arrests in 1995. Also reported for 1996 were 3,702 serious crimes (such as violence against the person, sexual offences, and robbery) and 2,104 arrests for serious crimes, down from 4,630 reported serious crimes in 1995 and 2,948 arrests.

V. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

49. The Special Committee considered the question of Gibraltar at its 1487th meeting, on 29 June 1998. The Special Committee heard Mr. Peter Caruana, Chief Minister of Gibraltar who stated that Gibraltarians were seeking decolonization through modernization of their constitutional relationship with the United Kingdom in a manner which would result in a non-colonial situation that retained political and constitutional links with that country (see A/AC.109/SR.1487). The Special Committee acceded to the request of the delegation of Spain to participate in the Committee's consideration of the question of Gibraltar. At the same meeting, the representative of Spain made a statement in which he recalled General Assembly resolutions 2353 (XXII), 2429 (XXIII), 1514 (XV) and 2625 (XXV) in relation to the principle of territorial integrity in the decolonization of Gibraltar and reiterated the position of his Government on the question of Gibraltar (see also paras. 55–56 below).

50. At its 1487th meeting, on 29 June 1998, the Special Committee decided to continue its consideration of the question at its next session, subject to any directives that the General Assembly might give in that connection at its fifty-third session and, in order to facilitate consideration of the question by the Fourth Committee, to transmit the relevant documentation to the Assembly.

B. Special Political and Decolonization Committee (Fourth Committee)

51. At its 7th meeting, on 13 October 1998, the Committee had before it a draft decision entitled "Question of Gibraltar" (A/C.4/53/L.2), submitted by the Chairman.

52. At the same meeting, the Committee adopted draft decision A/C.4/53/L.2 without a vote.

C. Action by the General Assembly

53. At its 78th plenary meeting, on 3 December 1998, the General Assembly, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), adopted decision 53/420 without objection, as representing the consensus of the members of the Assembly. The decision read as follows:

> "The General Assembly, recalling its decision 52/419 of 10 December 1997 and recalling at the same time that the statement agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland at Brussels on 27 November 1984 stipulates, *inter alia*, the following:
>
> > 'The establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar and at promoting cooperation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 Constitution',
>
> "Takes note of the fact that, as part of this process, the Ministers for Foreign Affairs of Spain and of the United Kingdom of Great Britain and Northern Ireland hold annual meetings alternately in each capital, the most recent of which was held in London

on 10 December 1997, and urges both Governments to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations."

VI. Future status of the Territory

A. Position of the administering Power

54. At the 12th plenary meeting of the fifty-third session of the General Assembly, Ambassador Stuart Eldon of the United Kingdom, in exercise of his right of reply, said:

"British sovereignty over Gibraltar was clearly established in the Treaty of Utrecht. This legal fact is incontrovertible. Moreover, the British Government stands by the commitment to the people of Gibraltar, as contained in the preamble to the 1969 Constitution of Gibraltar, which states that the United Kingdom will not enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another State against their freely and democratically expressed wishes. Spain's offer to reintegrate Gibraltar into Spain, to which Mr. Matutes referred in his speech today, can only prosper with the freely and democratically expressed support of the people of Gibraltar.

"The British Government believes that issues relating to Gibraltar can only be resolved by direct talks, such as those established under the 1984 Brussels Declaration. In that regard, we attach importance to continuing the dialogue with Spain as a means to overcoming our differences."

B. Position of the territorial Government

55. At the 4th meeting of the Fourth Committee, on 7 October 1998, Mr. Caruana, Chief Minister of Gibraltar, said, *inter alia*:

"Mr. Chairman, as the leaders of Gibraltar's Government, the Deputy Chief Minister and I come once again to address you for three reasons. First to re-assert our right to self-determination, which we have demonstrated to you is firmly based on the political and legal rights applicable to all Non-Self-Governing Territories on the United Nations list as established by United Nations resolutions and Covenants and international law as determined by the International Court of Justice. ... Second, we come to rebut the arguments of Spain in its attempt to obtain sovereignty of Gibraltar against the democratic wishes of our people; and third to seek from the United Nations a clear acknowledgement and declaration of the applicability of the principle of self-determination as the only principle relevant to the decolonization of Gibraltar.

"Spain argues that because she has a 300-year-old claim to the Territory, Gibraltar can only be decolonized by applying the principle of territorial integrity and that we do not have the right to self-determination. This is a misconceived position based on the distortion of the principle that self-determination cannot be used to disintegrate a Member State. Gibraltar is not, and has not been part of Spain for 294 years. The principle of territorial integrity therefore has no relevance. Further, the International Court of Justice has rejected the concept of territorial retrocession in the process of decolonization. It is not possible under the doctrine of the Charter of the United Nations to decolonize a colony by any principle other than self-determination; that is the doctrine of the United Nations.

"... How long does it take to acquire the rights given to colonial people by the Charter of the United Nations? Other ex-colonial peoples have exercised the right to self-determination after a much shorter presence in their territories, for example the United States of America, Australia, Canada, New Zealand and all the Caribbean countries. ... Why should the colony of Gibraltar be any different? We are no less indigenous than the peoples who exercised the right to self-determination in those and many other countries.

"... Every year this Committee recommends to the General Assembly (which adopts as a consensus resolution) a resolution calling on the administering Power, the United Kingdom, and Spain to take part in a bilateral process of dialogue aimed at overcoming all the differences between them over Gibraltar with the object of reaching a definitive solution to the problem of Gibraltar. Such a recommendation does not address the fact that the issue is not the resolution of supposed bilateral differences between the administering Power and the third party territorial claimant but the rights of the people of Gibraltar to decide their own future in the exercise of the right to

self-determination, which cannot be advanced in a bilateral dialogue between the United Kingdom and Spain. Only respect for Gibraltar's right to self-determination can bring about the decolonization of Gibraltar in accordance with the spirit of the Charter of the United Nations ...

"... To this end I informed this Committee, last year, that the Gibraltar Government was formulating proposals to the United Kingdom for further constitutional change. This process has moved forward over the last year and we are now in discussions with [Her Majesty's Government] on achieving a modernization of our constitutional links with the United Kingdom. We aim to achieve a relationship that maintains close political ties with the United Kingdom, but which produces the greatest possible degree of self-government. These new arrangements would give rise to a non-colonial relationship, and thus their acceptance by the people of Gibraltar in a referendum would be a valid and legitimate exercise of self-determination in accordance with the relevant General Assembly resolutions. It would, in our view, end the colonial status of Gibraltar and constitute the tailor-made fourth option to decolonization provided for in General Assembly resolution 2625 (XXV) of 24 October 1970.

"... The new constitutional arrangements we seek from the United Kingdom would not, of course, settle the dispute with Spain. We therefore want, on a parallel but unconnected basis, to pursue a process of dialogue with Spain, to improve relations and to establish a better communication with our neighbour on the large variety of issues that affect us both".

C. Position of the Government of Spain

56. At the 12th plenary meeting of the fifty-third session of the General Assembly, Mr. Abel Matutes, Foreign Minister of Spain, said:

"Every year the General Assembly renews its appeals to Spain and the United Kingdom to continue their negotiations with a view to putting an end to the colonial situation of Gibraltar. The current negotiation process stems from the so-called Brussels Declaration of 1984, in which the Governments of our two States undertook to establish a negotiation process, to include sovereignty issues, in order to settle all their differences. During the 1997 negotiating round I submitted a proposal that would allow Spain to regain sovereignty over Gibraltar, while maintaining for the inhabitants of the Territory all their current benefits, granting them, in the framework of the Spanish State, a greater degree of political autonomy than they enjoy today, and agreeing, as an additional guarantee of Spain's good faith, to share sovereignty with the United Kingdom for a long transition period.

"I believe that that proposal should be able to form the basis of an agreement that would, once and for all, put an end to an anachronistic situation originating from the dynastic wars of the early eighteenth century".

57. At the 6th meeting of the Special Political and Decolonization Committee (Fourth Committee), on 12 October 1998, the representative of Spain spoke on the question of Gibraltar and said, *inter alia*:

"Let me first say that Spain's position on the question of Gibraltar has not changed.

"I am addressing this Committee today in order to comment on the statement made in this room last Wednesday, 7 October, by the petitioner from Gibraltar, Mr. Caruana.

"First of all, the principle of self-determination of peoples is not the only principle applicable to decolonization processes. There is also the principle of territorial integrity.

"The circumstances of each colonial situation have been, and continue to be, different, and there is no one way of putting an end to such situations.

"It is true that, in most cases, decolonization has been achieved through the colonized peoples' exercise of the right of self-determination. This principle would also apply to most of the 17 Territories still under colonial rule.

"However, the situation is different in the case of colonies established in the territory and at the expense of other States which already existed as States at the time of colonization. In such cases, decolonization has been achieved in the only way possible — by restoring the territorial integrity of the States concerned. The question of Gibraltar falls into the latter category.

"That the principle of territorial integrity is fully applicable to the decolonization of Gibraltar is not an argument made by Spain alone; it is the clear, established and unequivocal doctrine of the United Nations, which, year after year, urges the United Kingdom and Spain to continue their negotiations with a view to ending this colonial situation.

"Secondly, Gibraltar is, geographically and politically, an integral part of Spain, with which it shared a common destiny until it was forcibly occupied by the United Kingdom. It was turned into a military base by the colonial Power, which first expelled the Spaniards living there and then occupied the isthmus illegally throughout the nineteenth century.

"Gibraltar is a United Kingdom colony, but its present inhabitants are not a colonized people. They are not an indigenous population, for they are not descended from the people who were colonized. They are descended from the colonizers and from people brought there by the colonizers. As Mr. Caruana himself acknowledges, the population on Gibraltar has been British for the past 294 years. It would therefore be unacceptable, and doubtless contradictory, to apply a principle — that of self-determination — which was designed to put an end to colonialism in order to achieve the exact opposite: the perpetuation of colonialism.

"Third, Gibraltar can remain a United Kingdom colony or it can revert to Spain; no other option is possible.

"The colonial situation of Gibraltar affects two sovereignties: that of the United Kingdom, as the colonial Power, and that of Spain, since the colony is established in Spanish territory.

"The Treaty of Utrecht, which established British sovereignty over Gibraltar, gave Spain a preferential right to sovereignty over Gibraltar in the event that it ceased to be British.

"Fourth, the proposal for the decolonization of Gibraltar, made last December by the Spanish Minister, Mr. Matutes, during the Anglo-Spanish negotiation process, was explained in detail last June by the Spanish representative to the Special Committee on Decolonization".

D. Anglo-Spanish negotiations

58. No meetings occurred within the negotiating process established by the Brussels joint communiqué of 27 November 1984 during the period under review. It will be recalled that, according to the communiqué, the Ministers for Foreign Affairs of Spain and of the United Kingdom agreed to hold annual meetings alternately in each capital with the objective of reaching a definitive solution to the problem of Gibraltar. The last meeting indicated as being held within the Brussels framework was on 10 December 1997.

59. It will be recalled that, during the last meeting held under the Brussels process, on 10 December 1997, the Spanish Minister for Foreign Affairs made a formal offer to the United Kingdom Government regarding a future status for Gibraltar, whereby the Territory would come under Spanish sovereignty, yet retain a large degree of local political and administrative autonomy (see A/AC.109/2112, para. 72). The Government of the United Kingdom has not formally responded to the proposal.

E. Anglo-Gibraltarian discussions

60. During the period under review, there were regular meetings and discussions between the United Kingdom and Gibraltarian ministers and officials. Among those discussions were talks held during the last quarter of 1998 between British and Gibraltarian officials on the modernization of Gibraltar's Constitution. Regarding those talks, Mr. Caruana stated the following during an address to the Royal Institute of International Affairs in October 1998:

> "We are in discussions with Her Majesty's Government on achieving a modernization of our constitutional links with the United Kingdom. We aim to achieve a relationship that maintains close political ties with the United Kingdom, and our British sovereignty, but which produces the greatest possible degree of self-government."

Notes

[1] Information contained in the present working paper has been derived from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations, on 17 May 1999, as well as from the official documents of the Government of Spain.

[2] *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 23* (A/7623/Rev.1), vol. III, chap. XI, annex, paras. 7–23.

[3] *Gibraltar Chronicle*, 5 February 1999.

[4] Ibid., 28 January 1999.

[5] "Partnership for Progress and Prosperity: Britain and the Overseas Territories", United Kingdom Secretary of State for Foreign and Commonwealth Affairs.

[6] *Gibraltar Chronicle*, 4 February 1999.

[7] *El País Semanal*, 12 July 1998.

[8] *Gibraltar Chronicle*, 19 February 1999.

[9] Ibid., 20 March 1999.

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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

New Caledonia

Working paper prepared by the Secretariat

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I. General

1. New Caledonia[1] is located in the Pacific Ocean, about 1,500 kilometres east of Australia and 1,700 kilometres north of New Zealand. It comprises one large island, known as Grande Terre, and smaller islands known as the Loyalty Islands (Ouvéa, Maré, Lifou and Tiga), the Bélap Archipelago, the Isle of Pines and Huon Islands. There are also several uninhabited islands to the north of the Loyalty Islands. The area of Grande Terre is 16,750 square kilometres, and that of the Territory is 19,103 square kilometres. Nouméa, the capital, is located in the south of Grande Terre. The Territory is divided into three provinces, South and North (on Grande Terre) and the Loyalty Islands.

2. According to the 1996 census, the population was 196,836, comprising indigenous Melanesians known as Kanaks (42.5 per cent); persons of European origin, mainly French (37.1 per cent); Wallisians (8.4 per cent); Polynesians (3.8 per cent); and others, mainly Indonesians and Vietnamese (8.2 per cent). The rate of population growth in 1997 was estimated at 1.68 per cent. About 60 per cent of the population is Catholic, 30 per cent Protestant and 10 per cent other religions. The official language is French, and about 28 Melanesian-Polynesian dialects are spoken.

3. The political and administrative arrangements described in section I in previous working papers have been fundamentally altered as a result of the Nouméa Accord. The new institutional arrangements are described in paragraphs 18–22 below.

II. Economic conditions

A. Employment and inflation

4. In 1998 the rate of inflation was 0.3 per cent, the lowest average annual rate in New Caledonia since 1986.

5. According to information provided by the administering Power, despite a 10.6 per cent drop in employment in the mining and metallurgy sector, the number of people employed increased by 3.9 per cent, due in large part to increased activity in the construction sector. Nonetheless, a structural disequilibrium, both quantitative and qualitative, exists in the labour market. There is only one employment offer for every nine requests for employment, and there is a gap between the skills employers demand and those that job seekers have. The average number of non-satisfied job demands per month in 1998 was 8,321, a 5.2 per cent increase over 1997.

B. Metals and mining

6. New Caledonia's economy is dominated by the nickel industry. The Territory has more than 20 per cent of the world's known nickel resources and is responsible for 6 per cent of the world's nickel output. In recent years the economy has suffered because of a depressed international demand for nickel, the principal source of export earnings.

7. In 1998, nickel sales were negatively affected by the economic crisis in Asia, which provoked a 33 per cent decline in the world price of nickel. The value of New Caledonia's mineral and metallurgic exports fell by 28.7 per cent, to 2.2 billion French francs. Mineral extraction fell 8 per cent compared to 1997. Production of metals, however, rose 3 per cent, to a record of 56,502 tons of nickel.

C. Tourism

8. Tourism is now regarded as the second most important industry. The sector was only marginally affected by the Asian crisis, and the number of tourists visiting in 1998 (103,835) fell only 1.2 per cent against the number that visited in 1997 (105,137). The greatest number of tourists (35,420) came from Japan.

D. Agriculture

9. Only a small portion of land is suitable for cultivation, making agricultural production relatively low; food accounts for 25 per cent of imports.

III. Developments

10. This section describes political and economic developments engendered by the Nouméa Accord of May 1998.

A. Political developments

11. On 5 May 1998, as a result of intensive consultations between the administering Power and the main local parties, the Nouméa Accord was signed, the text of which is reproduced as an annex to the previous working paper on New Caledonia (A/AC.109/2114). Under the terms of this Accord, the Kanak independentists and mostly Melanesian and French-descended integrationists opted for a negotiated

solution rather than an immediate referendum on political status. The Nouméa Accord states:

"The signatories to the Matignon Accords have therefore decided to work together towards a negotiated consensual solution, which they shall together submit to the inhabitants of New Caledonia for a decision.

"This solution will define the political organization of New Caledonia and the arrangements for its emancipation over the next 20 years.

"Its implementation will require a constitutional law, which the Government undertakes to draft with a view to its adoption by Parliament.

"The full recognition of the Kanak identity involves clarifying customary law status and its relationship to the civil law status of persons under ordinary law, defining the place of customary structures in institutions, *inter alia*, by establishing a customary Senate, protecting and enhancing the Kanak cultural heritage, introducing new legal and financial mechanisms to meet the demands that have been expressed on the grounds of ties to the land, while promoting land development, and adopting identity symbols expressing the essential place of the Kanak identity within the future community agreed upon.

"The institutions of New Caledonia shall carry out the new stage of the transition to sovereignty; some of the decisions of the Territorial Congress shall have the force of law, and an elected territorial executive shall prepare and implement them.

"During this period, indications shall be given of the progressive recognition of a citizenship of New Caledonia, which must reflect the common destiny chosen and which may become, at the end of the period, a nationality, should it be so decided.

"The electorate for elections to local assemblies in New Caledonia shall be restricted to persons who have been resident in the Territory for a certain period of time.

"In order to take into account the limited size of the labour market, provisions shall be made to promote access to local employment for persons who have been long-established residents of New Caledonia.

"The sharing of powers between the State and New Caledonia shall signify shared sovereignty. This shall be a gradual process. Some powers shall be transferred as soon as the new organization takes effect. Other powers shall be transferred according to a definite schedule, which the Congress may modify, in accordance with the principle of self-organization. The powers that have been transferred may not revert to the State, in accordance with the principle of the irreversibility of the new organization.

"Throughout the period of implementation of the new organization, New Caledonia shall receive State aid in the form of technical assistance and training and the funding necessary for the exercise of the powers transferred and for economic and social development.

"Commitments shall be applied to multi-year programmes. New Caledonia shall have a share in the capital or the functioning of the primary development tools in which the State is a participant.

"At the end of the 20-year period, the transfer of sovereign powers to New Caledonia, its access to the international status of full responsibility and the organization of citizenship by nationality shall be put to a vote of the populations concerned.

"Their approval would be equivalent to full sovereignty for New Caledonia."

12. On 6 July 1998, the French Parliament passed a constitutional reform by 287 votes to 10 that inserted two articles, 76 and 77, into the French Constitution. Article 76 called upon the people of New Caledonia to endorse the Accord in a referendum held before the end of the year, and defined the electorate eligible to participate in that referendum. Article 77 asserted that, pending popular approval of the Accord, the Government of France would begin transferring powers to the local Government as described in the Nouméa Accord.

13. Prior to the referendum, the two major parties of New Caledonia, the independentist Front de libération nationale kanak socialiste (FLNKS) and the integrationist Rassemblement pour la Calédonie dans la République (RPCR), both campaigned for approval of the Accord among their respective constituents.

14. The Accord was ratified by New Caledonians in a referendum held on 8 November 1998. With 74 per cent of the electorate voting, 72 per cent voted in favour of the Accord. The participation rate was 10 per cent higher than in the 6 November 1988 referendum that ratified the Matignon Accords.

15. In the North Province and the Loyalty Islands, both of which are controlled by independentists, the percentage in favour of the Accord was 86.8 per cent and 95.5 per cent respectively. In the South Province, which is mostly

integrationist, the Accord was ratified by 63 per cent of the population.

16. Following the referendum, the Secrétariat d'État à l'Outre-Mer of the French Government issued the following communiqué:

> "The voters of New Caledonia have just approved the Nouméa Accord of 5 May 1998 by a large majority.
>
> "Voter turnout (74.24 per cent) was significantly higher than it had been for the referendum of 1988, which demonstrates the New Caledonians' interest in this referendum affecting their future.
>
> "The 'yes' option scored a clear victory, garnering 71.87 per cent of the votes cast, compared with 57 per cent in 1988. The increase was significant in Nouméa and its surrounding communes, where the majority had voted 'no' ten years ago.
>
> "This result reflects support for the consensual solution which the Government has implemented with its the Caledonian partners: RPCR and FLNKS.
>
> "I commend, in particular, Jacques Lafleur and Roch Wamytan, who, with great perspicacity and courage, were able to reconcile their points of view. I pay tribute, with emotion, to the memory of Jean-Marie Tjibao and the historic role he played in the recognition of the Kanak identity and the reconciliation of the communities. After ten years of civil peace, institutional stability and development, New Caledonia is looking resolutely towards its future.
>
> "The Nouméa Accord provides for the renewal of relations between France and New Caledonia. It will translate into the draft organic law now being prepared, which should be submitted to the Council of Ministers in late November.
>
> "I am proud to have contributed, on behalf of the Government of Lionel Jospin, to the elaboration of this Accord, which enables all New Caledonians to share a common destiny.
>
> "I congratulate those who worked towards this success, particularly the RPCR and FLNKS leaders, who were able to unite around a common project. They will have to implement the Nouméa Accord with the help of all sectors of Caledonian society.
>
> "The solution of wisdom and hope which has just carried the day opens up prospects of peace and progress for New Caledonia."

17. An organic law and an ordinary law pertaining to New Caledonia were presented in the French Parliament. The organic law codifies the matters addressed in clause 77 of the constitutional reform, namely, the powers that would be transferred to the newly created institutions in New Caledonia, the organization of those institutions, rules concerning New Caledonian citizenship and the electoral regime and conditions and deadlines by which New Caledonians would determine their accession to full sovereignty. The ordinary law deals with other, mainly social and economic, matters covered in the Nouméa Accord. The French Legislature ratified both laws on 19 March 1999.

18. The governmental structure created as a result of the entry into force of the above-mentioned organic law is set out below.

19. The Congress is the deliberative assembly of New Caledonia. It contains 54 members, composed of 7 from the Provincial Assembly of the Loyalty Islands, 15 from the Provincial Assembly of the North Province and 32 from the Provincial Assembly of the South Province. Members are elected for five years. Those eligible to vote must satisfy one of the following conditions: (a) eligibility to vote in the referendum of 8 November 1998; (b) residence in New Caledonia for at least 10 years on the date of the election; and (c) be 18 years of age by 31 October 1998 and have either 10 year residence in New Caledonia or have at least one parent that satisfies condition (b).

20. The Government is the executive of New Caledonia. It is elected by the Congress and responsible to it. It is composed of between 5 and 11 members, the exact number to be fixed by Congress prior to the election of the Government. The Government prepares and executes the decisions of Congress. The Government names public and administrative officers, oversees the execution of public works, manages local resources, gives its opinion regarding projects that involve the mines in the Territory and prepares the codification of the Territory's laws. As the executive, the Government replaces the institution of the High French Commissioner for New Caledonia, which will cease to exist.

21. The provincial assemblies are responsible for all matters relating to the province that are not directly attributed to the President of the Provincial Assembly. The President of the Provincial Assembly acts as the executive of the province, and as such is responsible for the administration of the province and the management of public employment at the provincial level. Members of the Assembly are elected for five years by an electorate, subject to the same conditions as that of the Congress (see para. 19 above).

22. An Economic and Social Council will be created to advise the Government on projects and possible laws that have an economic or social character. It will comprise 28 representatives of professional, labour and cultural organizations, 2 members to be designated by the Customary Senate and 9 personalities that are representative of the economic, social and cultural life of New Caledonia are to be designated by the Government on the advice of the provincial assemblies.

23. A parallel set of institutions is to be created in the eight areas that are designated as "customary". These institutions are designed to accommodate the full political recognition of the Kanak identity. The role of the customary areas is to be enhanced by the revision of their current uncertain legal status and by the creation of customary institutions endowed with powers at the local and national levels. In particular, a Customary Council will be created in each customary area. Its precise composition will be fixed by traditions proper to the area. In addition, a Territory-wide Customary Senate will be created, comprising 16 members — 2 selected by each of the 8 customary councils. The Customary Senate will be represented in the Economic and Social Council, the Administrative Council, the Consultative Council on Mines and local development agencies. The Customary Senate and the councils are to be consulted by the executive and legislative organs of New Caledonia on matters that have to do directly with the Kanak identity.

24. Given the ratification of the Accord by the people of New Caledonia and the codification of its provisions into French law, its implementation will proceed according to the following timetable. Elections were held on 9 May 1999 for the provincial assemblies and the Congress. The new assemblies and Congress were to be in place by 14 May. The Government will be elected by 18 June 1999. The customary councils and the Customary Senate will be designated by 28 August. The first meeting of the provincial assemblies will take place by 14 August.

B. Economic developments

25. It will be recalled (A/AC.109/2114, para. 8) that a precondition for the talks that led to the Nouméa Accord was the exchange of nickel reserves from the French State-owned company, Eramet, to the Kanak-controlled Société minière du Sud Pacifique (SMSP). This transfer permitted SMSP to go ahead with the construction of a smelter in a joint venture with the Canadian company Falconbridge.

26. Subsequent to this transfer, the office of the Prime Minister of France issued the following communiqué:

> "A Memorandum of Understanding has just been signed at the Ministry of Economic Affairs, Finance and Industry between the State, Société Minière du Sud Pacifique (SMSP) and the SLN-Eramet group concerning the conditions for the exchange of mining rights in the Poum and Koniambo massifs in New Caledonia, with a view to the construction of a nickel smelter in the northern part of the Territory. The construction will be directed by SMSP in a joint venture with the Falconbridge company, which has signed the Memorandum of Understanding.
>
> "As promised, the Government expedited action on this matter, which was not settled until last June.
>
> "In the initial phase, Mr. Philippe Essig, who was in charge of a preliminary government study, outlined the principles of a memorandum, particularly a proposal to establish an autonomous entity that would receive the rights to the massifs and retain them for the required period of time before it was decided to construct a smelter.
>
> "The draft Memorandum, whose general thrust had already been approved last December, was finalized in a few weeks, as expected.
>
> "The Memorandum was signed thanks to the parties' sense of responsibility and will pave the way for the construction of the smelter in North Province, which will be a decisive step towards restoring economic balance and protecting the interests of SLN, a key force in economic life and a major employer in New Caledonia.
>
> "The Government hopes that discussions on the Territory's institutional future will now begin and, to that end, will contact the partners in the Matignon Accords."

27. In February 1999, one year later, the Government of France announced the privatization of Eramet. At the same time, Eramet announced its acquisition of SIMA, an important producer of steel and nickel alloys. The acquisition of SIMA, part of a long-term development strategy, strengthens the position of the company within its sector. Under the privatization agreement, 30 per cent of Eramet's New Caledonian nickel unit (SLN) will be transferred to a public company representing New Caledonia's investment institutions. As a result, the Territory will own about 8 per cent of the newly privatized Eramet. In this way, the New Caledonians will be shareholders in the management of their most important source of wealth. This

agreement constitutes the implementation of a first phase of the economic provisions of the Nouméa Accord (sect. 4).

IV. Consideration of the question by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

28. The Special Committee considered the question of New Caledonia at its 1493rd, 1495th and 1496th meetings, between 7 and 13 July 1998. In accordance with a decision taken at the 1493rd meeting, Roch Wamytan, of FLNKS, made a statement at the 1495th meeting of the Special Committee, on 10 July. At the same meeting statements were made by the representatives of China, Côte d'Ivoire, Fiji, Papua New Guinea and the Syrian Arab Republic. At that meeting a statement was also made by France, the administering Power.

29. The representative of France said that in the spirit of transparency his country had striven to disseminate the fullest possible information on the situation in New Caledonia. The act of taking the floor during the current session reflected the important development that had taken place, namely the Nouméa Accord.

30. He said the situation was satisfactory to all parties, and the Accord reflected a consensus that was a product of reconciliation. It also represented a greater recognition of the Kanak identity in New Caledonia, established a shared sovereignty and provided for a significant phased transfer of power. Further, it enabled the Kanaks to exercise certain jurisdiction in international and regional affairs. The Accord also provided for a system of elections. Moreover, a new constitutional law made it possible to approve the Accord next November. Through informal contacts between the parties during the year, it had been possible to craft consensus amendments to the draft, which, it was hoped, would receive the Committee's support.

31. At the 1496th meeting, on 13 July, the representatives of Fiji and Papua New Guinea introduced a draft resolution (A/AC.109/L.1878/Rev.1). The Special Committee adopted the draft resolution without a vote (A/AC.109/2127).

B. Special Political and Decolonization Committee (Fourth Committee)

32. At its fourth meeting, on 7 October 1998, the Special Political and Decolonization Committee (Fourth Committee) heard a statement by Roch Wamytan, president of FLNKS (A/C.4/53/SR.4).

33. Mr. Wamytan said that each time his people had embarked upon the struggle to secure its lost freedom, it had been subjected to repression of various kinds, which had redoubled with the implementation of a deliberate immigration policy. The struggle had lasted until 1988, when the Government of France, RPCR and FLNKS signed the Matignon Accords. Under those Accords, FLNKS had entered a reservation regarding the entitlement to vote on the question of self-determination in 1998. It was evident that as a result of the settlement policy carried out by successive French Governments since the 1970s, the Kanak people found themselves to be in a minority on the electoral list. Despite continuous appeals by FLNKS for France to implement the United Nations resolution on the question of immigration in Trust Territories, an additional 20,000 people had arrived in New Caledonia between 1988 and 1997.

34. In view of that fact, it was logical to arrive at the conclusion that holding a referendum in 1998 on the question of self-determination would merely lead to a new increase in tension and a socio-political explosion. Accordingly, FLNKS and its two partners in the talks had decided to discuss the possibilities for finding a way out of the situation that had arisen in 1998. FLNKS had elaborated a framework project for the creation of a State in association with France, which was the only constitutional possibility of taking into account the lawful nature of the interests of the Kanak people and their inalienable right to independence and the lawfulness of the interest of the other communities, which had become the victims of history. The talks had resulted in the Nouméa Accord. The opportunity those agreements provided for preparing New Caledonia for the attainment of independence was one that was not to be missed. In that connection, it was envisaged that the United Nations was to be kept apprised of the progress made towards the attainment of freedom.

35. The process laid down in the Nouméa Accord went beyond 2000, which was to be the final year of the International Decade for the Eradication of Colonialism. It was important for the United Nations to continue its efforts to secure the decolonization process in New Caledonia initiated by the Matignon Accords within the framework of the Nouméa Accord which established the conditions in

which New Caledonia, under the aegis of the United Nations, could gradually attain full sovereignty. The United Nations must be vigilant in monitoring the implementation of the Nouméa Accord, while at the same time, France must meet its obligations to implement the Accord. In that respect it would be desirable if France were to provide the Secretary-General, on an annual basis, with all information relating to the political, economic and social situation in New Caledonia and if, finally, France were to permit the United Nations to send a mission to New Caledonia in connection with the implementation of the Nouméa Accord in the middle of 1999. He was confident that in spite of the current difficulties, New Caledonia would confirm the Accord on the basis of the results of the referendum on its ratification.

36. At a meeting of the Fourth Committee, on 13 October, the representative of France stated that the Nouméa Accord provided for taking Kanak identity more fully into account in the political and social organization of New Caledonia and for a sharing of sovereignty, which will translate progressively into significant transfers of power. The Accord also contained provisions relating to international and, in particular, regional affairs. Access to full sovereignty will be the topic of an electoral referendum after 15 to 20 years.

37. He added that the Accord contained provisions concerning the United Nations. In particular, France was making every effort, on its own initiative and in accordance with Article 2, paragraph 7, of the Charter of the United Nations, to disseminate as much information as possible on New Caledonia.

38. Lastly, he indicated that the constitutional law on New Caledonia had been approved on 6 July at a meeting of the French National Assembly and Senate. This amendment to the French Constitution would permit the approval of the Nouméa Accord.

39. At the same meeting, the Committee adopted without a vote the draft resolution on New Caledonia contained in document A/53/23 (part V).[2]

C. General Assembly

40. At its 78th plenary meeting, on 3 December 1998, the General Assembly adopted without a vote resolution 53/65, entitled "Question of New Caledonia".

41. In that resolution the General Assembly welcomed the developments in the Territory, exemplified by the Nouméa Accord, invited all the parties to continue promoting a framework for the peaceful progress of the Territory towards an act of self-determination in which all options are open and which would safeguard the rights of all New Caledonians based on the principle that it is for the populations of New Caledonia to choose how to control their destiny, and decided to keep the process under continuous review.

Notes

[1] The information contained in this paper has been derived from information transmitted to the Secretariat by the Government of France.

[2] To be issued as *Official Records of the General Assembly, Fifty-third Session, Supplement No. 23* (A/53/23).

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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

United States Virgin Islands

Working paper prepared by the Secretariat

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I. General

1. The United States Virgin Islands[1] are located in the eastern part of the Caribbean Sea, approximately 1,000 miles south-east of Miami and 45 miles east of Puerto Rico. The Territory is made up of three main islands (St. Croix, St. John, and St. Thomas) and one small island (Water Island) recently transferred to the jurisdiction of the territorial Government. The capital, Charlotte Amalie, is located on St. Thomas.

2. According to the 1990 census, the population was 101,809, broken down as follows between each island: St. Croix, 50,139; St. Thomas, 48,166; and St. John, 3,504. The population was estimated to be 118,211 in July 1998, and its growth rate was estimated at 1.16 per cent.

3. Immigration into the Territory has declined over the past several decades. Native Virgin Islanders were a minority in the 1980 and 1990 censuses, but were a majority again by 1995, as children of the immigrant population raised the number of native-born. The percentage of residents born outside the United States decreased from 37.7 per cent in 1980 to 33.9 per cent in 1995. Foreign immigrants are mostly from the Eastern Caribbean and the Dominican Republic, while domestic migrants came from Puerto Rico and the mainland United States.

II. Constitutional and political developments

A. General

4. The United States Virgin Islands constitute an organized, unincorporated Territory of the United States of America. The Territory is administered under the authority of the Office of Insular Affairs, a unit of the United States Department of the Interior. Following the adoption of the Organic Act of the Virgin Islands (1936), last revised in 1954, the islands were granted a measure of self-government over local affairs. Executive power is vested in a popularly elected Governor, who appoints, with the advice and consent of the Legislature, the heads of the executive departments.

5. The Legislature, a unicameral body comprising 15 senators, is elected for a two-year term by a popular vote. The Legislature has the power to enact laws such that they are consistent with federal laws applicable to the Territory and do not impair rights guaranteed by treaties, international agreements, or rights contained in the Organic Act's "Bill of Rights". Under the latter are enumerated, *inter alia*, rights of due process and equal protection, and freedoms of speech, assembly and religion. The Legislature may also issue bonds, levy customs duties (up to 6 per cent) and oversee executive departments. Legislation is subject to approval by the Governor, whose veto can be overridden by two thirds of the Legislature. The United States Congress retains the right to annul any act of the local Legislature. The United States Virgin Islands is represented in the United States Congress by a popularly elected Resident Commissioner who may vote in the committees in which he or she is a member, but not in floor votes.

6. The judicial system includes two courts: the United States Federal District Court of the Virgin Islands, whose judges are appointed by the President of the United States with the advice and consent of its Senate; and the United States Territorial Court of the Virgin Islands, whose judges are appointed by the Governor. The Federal District Court has jurisdiction in civil, criminal and federal actions.

7. There have been five attempts since 1954 to redraft the Constitution to give the Territory greater autonomy. Each draft, however, was rejected by a referendum. In the most recent attempt, in 1993, 80.3 per cent voted to retain the Territory's current status. The result was considered invalid, however, as less than 50 per cent of the electorate voted.

8. The process of transferring ownership of Water Island, off the south shore of St. Thomas, to the United States Virgin Island Government, is ongoing. Decisions regarding the final disposition are pending the outcome of litigation between the master leaseholder and the United States Department of the Interior.

B. Recent elections

9. The governorship of the Territory changed hands from Roy. L. Schneider to Charles W. Turnbull in January 1999, following elections in November 1998. Mr. Turnbull won the election with 58 per cent of the vote against the incumbent, Mr. Schneider, who obtained 40.9 per cent. In his first mandated address on the state of the Territory, the Governor emphasized the precarious nature of the Territory's financial system, indicated that he would reorganize and cut the costs of Government and noted that he would work closely with the private sector to encourage new businesses, promote the growth of existing businesses and increase employment.[2] The Governor had also indicated during his campaign that he would call a convention to revise the current Constitution.[3]

10. Also in January a new legislature was sworn in. The twenty-third Legislature of the Virgin Islands is made up of seven Democrats, two Republicans, two members of the Independent Citizens Movement and four non-party affiliate members.

III. Military installations

11. According to the most recent information provided by the administering Power (see A/AC.109/2014, para. 19), the United States Navy maintains a radar and sonar calibration station and a headquarters building for its underwater tracking facility. There are permanent recruitment centres for the armed forces and a detachment of the United States Coast Guard on St. Thomas. The Virgin Islands National Guard is affiliated with the United States Army. The Territory remained a port of call for United States naval vessels and those of its allies.

IV. Economic conditions

A. General

12. In 1996 the gross territorial product was US$ 1.34 billion, and per capita income was around $12,000. This represents approximately 80 per cent of per capita income in the mainland United States. According to the administering Power, approximately 30 per cent of the population lives below the poverty line.

13. A considerable amount of work has been done to repair damage from two hurricanes, "Hugo" in 1989 and "Marilyn" in 1995. The administering Power reports that these hurricanes caused between $3 billion and $4 billion in damage to homes, businesses, utilities and commercial buildings. These costs continue to cause fiscal and financial problems on the island, despite federal assistance of several hundred million dollars in grants or loans.[3]

B. Public finance

14. According to the incoming Governor, as cited in press reports, the territorial Government bore a long-term debt of approximately $1 billion in addition to other obligations, including $66 million in outstanding vendor payments, $24 million in delayed tax refunds, and $90 million owed to other funds and for unpaid debts of previous years.[4] Service on the long-term debt is expected to cost the Government about $40 million per year for the next 25 years.

15. The local Government's financial situation deteriorated notably in the spring of 1999. The Governor announced on 6 April 1999 that the treasury was $5 million short of the amount needed to pay government salaries, and that, for the first time in the Territory's history, public salaries would not be paid as scheduled.[5]

16. Attempts to redress the poor fiscal situation have been complicated by a reduction in the rebate to the Territory of a federal rum tax. A total of $13.50 is taxed per proof gallon of rum, of which a portion is rebated to the territorial Government. On 1 October 1998, the beginning of the fiscal year, the amount rebated dropped from $11.30 to $10.50 per proof gallon when the United States Congress refused to act on the question. The reduction in the rebate costs the Territory from $6 million to $8 million per year.

17. According to the administering Power, direct federal expenditures in the Territory totalled $625 million in 1997, an increase of 11 per cent over 1995

C. Agriculture, livestock and fisheries

18. Agriculture has played a small part in the Territory's economy since the decline of sugar production in the 1960s. In the 1990 census, only 1.2 per cent of the economically active population was engaged in agriculture or fishing.

19 As a result, the Territory has to import about 90 per cent of its food, at a cost of between $200 million and $300 million per year.[5] Development of agriculture is hindered by high production costs and water scarcity. However, incentives to promote agriculture do exist. In particular, farm land is tax exempt, farm income is taxed at a lower rate than other income and imported farm equipment is 50 per cent exempt from excise taxes.

20. In addition, a number of local and federal programmes provide assistance for agricultural development. Under an agreement with the United States Department of Agriculture, a Rural Development Loan Fund provides direct loans up to $99,500. The Small Business Development Agency provides direct loans of up to $10,000 for licensed farmers and fishermen. The Farmers Home Administration guarantees up to 90 per cent of bank loans for land, equipment, buildings and operating expenses.

D. Industry

21. Manufacturing incentives are provided by a trade regime that confers unique advantages on the United States Virgin Islands. Items assembled in the Territory can be exported duty free into the United States, even if up to 70 per cent of its value consists of foreign dutiable components. Other incentives include 90 per cent exemption from local corporate income taxes for 10 to 15 years for new manufacturers. Goods manufactured for export include watches, textiles, electronics, pharmaceuticals and rum (responsible for 15 per cent of the Territory's export revenue). Over 30 large corporations have set up manufacturing operations in the Territory and industrial parks are under construction.

22. Employment in manufacturing fell to 2,210 in 1997, due primarily to a contraction in the watch assembly industry. Employment in the sector is expected to rise in 1998 as new jobs in petroleum and light manufacturing offset continued declines in the watch industry.

23. The industrial sector is dominated by the Hess Oil Refinery (St. Croix), one of the largest in the Western hemisphere, which employs 2,000 workers. On 30 October 1998 the Hess Oil Corporation formed a 50 per cent joint venture with Petróleos de Venezuela to own and operate the refinery. The new corporate entity was named Hovensa L.L.C. In the two months subsequent to the merger, total crude oil refined was 433,000 barrels per day, compared with 419,000 barrels per day for the previous 10 months, and 411,000 barrels per day in 1997. In 1999, Hovensa will begin construction of a 58,000 barrel per day coker to process Venezuelan crude oil. The coker is expected to be completed in 2001.[6]

24. Negotiations are currently under way regarding the licensing of a commercial rocket construction and launching company on the island. The company, Texas-based Beal Aerospace Technologies, would invest $58 million in the Territory to build its world headquarters and rocket assembly plant. The project has been opposed, however, by some environmental groups.

E. Banking and insurance

25. According to the most recent information provided by the administering Power (see A/AC.109/2076, paras. 12 and 13), as of 1995 deposits in the eight major financial institutions operating in the Territory (Banco Popular, Bank of St. Croix, Chase Manhattan, Citibank, First Bank P.R., First VI Federal Saving Bank, Bank of Nova Scotia and VI Community Bank) exceeded $1.2 billion. Time deposits, primarily in non-United States banks, represented 25 per cent of the total. The banks offer a full range of personal and corporate financial services. All banks are regulated by the territorial Banking Board headed by the Lieutenant Governor. United States banks operating in the Territory are also regulated and insured by United States law and institutions.

26. All types of insurance are available through insurance agents who represent major international insurance companies. The insurance industry is regulated by the Lieutenant Governor who serves as Insurance Commissioner.

F. Trade

27. The Territory is exempt from the Jones Act, which requires that freight moving between United States ports be carried by United States-flagged ships. The island benefits from other favourable trade concessions (see para. 20 above) as part of its relationship with the administering Power.

28. Nonetheless, the Territory generally runs at a trade deficit, owing to its heavy reliance on imported goods, most of which come from the mainland United States. In 1995, the Territory imported $3,300 million worth of goods, and exported $3,036 million, according to publicly available Department of Interior figures.

29. Furthermore, there are indications that trade has been affected by recent policies undertaken by the administering Power. According to press reports, local businessmen say that tariff concessions made as a result of signing the North American Free Trade Agreement and joining the World Trade Organization have erased the price advantage the United States Virgin Islands used to have as a free port.

G. Tourism

30. The tourism sector accounts for more than 60 per cent of the gross territorial product and employs around two thirds of the workforce. According to press reports,[7] annual cruise arrivals increased by 50 per cent in the past 10 years, reaching 1.6 million, which represents a record for the Territory. At the same time, overall tourism income fell from $901.7 million in 1993 to $601.2 million in 1997. These figures suggest that people that arrive on the islands by cruise ship do not spend much money on the island itself. Cruise ship passengers represent 80 per cent of all visitors,

yet provide only 25 per cent of total tourism revenue. Hotel occupancy increased by 17 per cent in 1997.

31. Air passenger traffic declined by approximately 25 per cent in 1996, but increased by 10 per cent in 1997. The island of St. Thomas lost an estimated $2 million as a result of a 10-day strike by American Airlines pilots in 1998. The strike by the airline, which operates most of the flights to the island, coincided with an important holiday weekend.

32. A Tourism Development Trust Fund has been created and will provide about $20 million for investments in gaming hotels. It is also expected to provide capital for malls, golf courses and trans-shipment facilities. The charter yacht industry earned $30 million in 1995. Industry experts maintain that there is a potential for earnings of $120 million. Experts also point to a large potential market in provisioning cruise ships, where the Territory has a particular advantage, since ships do not have to pay longshoreman charges there (in 1995, the industry spent $77 million on Caribbean-supplied consumer goods).

H. Transportation, communication and basic facilities

33. The Territory has five major docking facilities. South Shore (St. Croix) is located near the St. Croix airport and industrial park, and handles lift-on/lift-off and roll-on/roll-off vessels. Gallows Bay (St. Croix) has a combined berthing space of 700 feet and a small roll-on/roll-off ramp. Frederiksted's (St. Croix) 5,216-foot port can berth two large cruise ships and two mini-cruise ships simultaneously and can accommodate naval submarines. Crown Bay (St. Thomas) has three cruise ship docks operated by the Virgin Island Port Authority, a semi-autonomous government agency, as well as a 900-foot wharf which can accommodate roll-on/roll-off cargo and container and break bulk operations. The West Indian Company bulkhead pier (St. Thomas) is privately operated, primarily for cruise ships. In September 1998, a new $9 million molasses tanker pier was dedicated on the south shore of St. Croix. The facility can accommodate two long vessels simultaneously.

34. Two international airports, Cyril E. King Airport on St. Thomas and Alexander Hamilton Airport on St. Croix, are operated by the Port Authority. They have a combined annual passenger traffic count of over 2 million. According to the administering Power, plans are under way to renovate and expand the terminal facility at Alexander Hamilton Airport.

35. Electricity is thermally generated using imported fuels. The Water and Power Authority serves approximately 47,000 customers. Major generating facilities are located on St. Thomas and St. Croix, and a standby facility is located on St. John. Transmission and distribution of power is typically 13,800 volts, 3 phase, 60 hertz throughout the Territory.

36. Owing to limited freshwater supplies, salt water is used extensively for non-domestic purposes, including firefighting and sewerage. The Water and Power Authority desalinates water and collects rainwater for domestic use. A desalination plant on St. Thomas produces 4.45 million gallons per day. Wells, particularly on St. Croix, supply the remainder of the freshwater necessary. Owing to the high cost of water, average daily consumption is about 50 gallons per person per day, about one third the United States average.

37. In August 1998 ground was broken for the construction of a new $5.5 million waste water plant on the island of St. John.[8] In addition, the board of the Water and Power Authority approved a $507,000 project to replace old, corroded pipes in Christiansted with new polyvinyl chloride (PVC) pipes.

V. Social conditions

A. Labour

38. According to information provided by the administering Power, the labour market improved slightly in 1997, as employment increased by 9 per cent to 43,453. The unemployment rate declined from 5.3 per cent in 1996 to 4.9 per cent in 1997.

39. The largest employer in the Territory remains the Government, accounting for 12,900 employees, about 12 per cent of the total population of the island. A large number of other employees are paid under government contracts and federal government grants. In 1997, the federal and local Governments combined accounted for 13,800 jobs, approximately one third of all civilian employment in the Territory. Public-sector employment was expected to remain at the same level in 1998.

40. The Territory has an insurance programme for the unemployed. Paying into the programme are 3,400 federal, local and private employers. The money is deposited into the United States Treasury at the federal level. Private employers paid $8.7 million in 1996 and $7.7 million in 1997. In 1996, 11,000 claimants received $11.5 million in

benefits and in 1997, 7,300 claimants received $6.7 million in benefits. An external federal audit by a United States Inspector General in 1999 found $18.7 million in unrealized revenues and $408,200 in unsupported costs.[9]

41. Employers must follow federal and territorial labour laws, such as minimum wage and hours, standards of safety and occupational health, and payment of social security and unemployment insurance.

B. Public health

42. The hospital in St. Thomas offers general service and has 157 beds. The hospital in St. Croix has 120 beds. There is also a 16-bed private hospital in St. Croix. Overall responsibility for the hospitals is held by the Department of Health.

43. In 1999, for the first time, the Territory was the recipient of federal Department of Health and Human Services grants to improve access to human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS) support services and medication. The Territory received $624,935 in such grants. There have been a total of 377 AIDS cases reported in the Territory, and 199 known deaths to date. The number of new cases reported in 1998 was 30, down from 74 in 1997.[10]

C. Crime and crime prevention

44. The police force is administered by the Virgin Islands Government Department of Police. An Adult Correctional Facility is located on St. Croix. By United States standards, the United States Virgin Islands has one of the highest per capita murder rates.

45. A United States federal court has ordered the local Government to relieve overcrowding at local prisons. The current prison population in the Territory is 308. In addition, 192 inmates are incarcerated in off-island prisons to reduce overcrowding. A government plan to expand one of the Territory's prisons has been delayed owing to a lawsuit by one of the potential contractors. A local judge eventually ruled that there had been a substantial violation of local laws in the contract award.[11]

46. The United States Virgin Islands, along with Puerto Rico, was designated a High Intensity Drug Trafficking Area (HIDTA) by the Office of National Drug Control Policy in 1994. HIDTAs are recognized major drug trans-shipment points between South America and the United States. Since 1994, the two Territories have been receiving approximately $9 million combined in extra funding to reduce the flow of drugs.

D. Educational conditions

47. Education is compulsory and free for all children between 5 and a half and 16 years of age. The Government's Department of Education administers 32 schools on St. Thomas, 14 on St. Croix and 2 on St. John. According to the administering Power, maintenance of the physical facilities is poor and vandalism is a constant problem.

48. School enrolment has been steadily declining since its peak in 1983 at 33,092 students. By 1997 it had fallen 15 per cent to 28,303, of which about 6,600 attend private schools.

49. Accreditation of local schools by the Middle States Association was extended until 1 May 2001. The Association noted that the extension of accreditation was in part due to a renewed commitment on the part of the local Government towards the school system. The Government recently announced that $500,000 has been set aside for substitute teachers and site-based school management.[12]

50. The University of the Virgin Islands has campuses on St. Thomas and St. Croix and provides courses in business administration, the humanities, social sciences and teacher education, and occupational courses in accounting, business management, secretarial administration, nursing, police science and administration.

E. Human rights

51. More than 3,000 Black farmers from the United States Virgin Islands submitted a class action lawsuit against the United States Department of Agriculture in 1997, alleging that it discriminated against Black farmers in its disbursement of loans. In January 1999, the United States Department of Agriculture settled the suit in favour of the farmers, agreeing to provide monetary compensation.[13]

52. In January 1999, a local company, HAP Construction Company, sued the Army Corps of Engineers, the Defense Department and the Federal Emergency Management Agency, alleging racial discrimination in the award of a contract to clear debris left by hurricane "Marilyn". The case is still pending. The Corps of Engineers has lost at least two racial discrimination suits in the last two years.[13]

VI. Future political status of the Territory

53. No significant action on the political status of the Territory has been taken since a referendum was held in 1993. In that ballot, 80.3 per cent of voters supported the existing status, 14.2 per cent voted for full integration with the United States, and 4.8 per cent voted for an end to United States sovereignty. Only 27.4 per cent of registered voters voted on the question, while the requirement for the referendum to be considered valid was 50 per cent.

A. Position of the territorial Government

54. At the fifty-third session of the General Assembly, the Minister of State, Representative for External Affairs, of the United States Virgin Islands made a statement before the Fourth Committee.[14] The representative noted that independence was not the only legitimate political option for Non-Self-Governing Territories, but if other political alternatives were to be recognized as legitimate, they needed to provide a minimum level of political equality. Dependency models that provided partial equality, or the illusion of equality, did not conform to the parameters set by the General Assembly even if they were efforts made in good faith. He noted that it was evident that none of the Territories currently considered non-self-governing by the Assembly had met the criteria of full self-government. He argued that the Assembly must ensure that the decolonization process not expire through the re-definition of the current arrangements as self-governing, without the people concerned having achieved full political equality in whatever political arrangement they freely choose.

B. Position of the administering Power

55. In a statement made to the Fourth Committee during the fifty-third session of the General Assembly,[15] a representative of the United States said that his country fully supported the right of people in Non-Self-Governing Territories to a full measure of independence, but noted that there was no single standard of decolonization. In particular, he did not think that residents of a Territory should have to choose one of three possible changes in status if they were happy with their current status. He also said that the people of a majority of the Territories under consideration no longer consider the activities of foreign economic interests or the presence of military installations on their Territory to be detrimental to their interests. He considered that the majority of the Territories on the list were actually self-governing and should be removed from the list.

C. Action by the General Assembly

56. On 3 December 1998, the General Assembly adopted, without a vote, resolution 53/67 B, section XI of which concerns the United States Virgin Islands. In the resolution, the Assembly, *inter alia*, requested the administering Power (a) to bear in mind the views of the people of the Territory and keep the Secretary-General informed of the wishes and aspirations of the people regarding their future political status; (b) to continue to assist the territorial Government in achieving its political, economic and social goals; and (c) to facilitate the participation of the Territory, as appropriate, in various organizations, in particular the Organization of Eastern Caribbean States and the Caribbean Community.

Notes

[1] The information contained in the present working paper was derived from information transmitted to the Secretary-General by the Government of the United States of America as well as from published sources.

[2] *Overseas Territories Review*, February 1999.

[3] *Virgin Islands Daily News*, 9 January 1999.

[4] *Virgin Islands Daily News*, 7 April 1999.

[5] Ibid., 19 January 1999.

[6] Ibid., 8 March 1999 and 25 July 1998.

[7] *Overseas Territories Review*, August 1998.

[8] *Virgin Islands Daily News*, 28 January 1998.

[9] Ibid., 12 February 1999.

[10] Ibid., 17 February 1999.

[11] Ibid., 10 March 1999.

[12] Ibid., 6 January 1999.

[13] Ibid., 9 January 1999.

[14] A/C.4/53/SR.4.

[15] A/C.4/53/SR.5.